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## **ADDENDUM TO FINAL STATEMENT OF REASONS**

### **CALIFORNIA CODE OF REGULATIONS**

TITLE 15: Chapter 1, Subchapter 2, Article 4, Sections 3130 through 3147.

## **Inmate Mail**

### **REVISED FINAL STATEMENT OF REASONS:**

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend and adopt provisions governing Sections 3130 through 3147, of the California Code of Regulations (CCR), Title 15, Division 3, concerning inmate mail.

The Department recognizes that there have been inconsistencies in mailroom processes statewide that have needed to be addressed and standardized. The Department further recognizes that most of the existing mail regulations in the CCR have not been updated for at least 10 years. In developing these revisions, consideration was given to each institutions physical plant differences and staffing allotments. The revisions have been developed to align the Department's mail policy with current United States Postal Service (USPS) regulations, to avoid litigation regarding treatment of certain bulk rate items, and to incorporate older Administrative Bulletins regarding various changes to mail procedures. As such, the revisions will assist in streamlining the processing of inmate mail, and upgrade and standardize the operation and the efficiency of the institution's mailrooms.

It should be noted that changes to the initially submitted Final Statement of Reasons have been made in red with a dotted underline.

### **DETERMINATION:**

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected private persons than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally,

there has been no testimony or other evidence provided that would alter the Department's initial determination.

### **ASSESSMENTS, MANDATES AND FISCAL IMPACT:**

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing business, or create or expand business in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not directly affected by the internal management of State prisons; or on prison housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

### **Section 3000**

**Section 3000 was amended in the initial text** to expand upon the definition of an indigent inmate to include those inmates without sufficient funds to pay for first class postage. The Department has determined to return the definition of "indigent inmate" in CCR section 3000 to its original location. The concept of an indigent inmate as it pertains to inmate mail is unique such that it has now been included in the general mail definitions in CCR subsection 3133(a)(5). The definition has also been changed for clarification, in response to public comments, to provide that an inmate can qualify for indigent writing supplies and postage only if they have \$1.00 or less in their Inmate Trust Account for 30 consecutive days. The Department agrees that this language is clearer, and offers more latitude than the definition of an inmate being without the funds to pay for a single postage stamp for 30 consecutive days

### **Section 3130.**

**Section 3130 is amended** to clarify the general mail policy of the Department by removing language that is outdated or repeated elsewhere in the regulations and by adding language that provides a broader overview of the Department's inmate mail general policy. Several changes have been made in the 2<sup>nd</sup> 15 Day Renote for clarity.

### **Section 3131.**

**Section 3131 is amended** to remove the requirement that the Director (now the Secretary) must approve every correctional facility's plan of operations for the sending and receiving of inmate mail prior to its implementation. Each institution's plan of operation is intended to delineate the regulations as they pertain to their physical plant. The Department has determined it is overly burdensome to require the Secretary to review each institution's plan, as they are checked for compliance by an audit team on a regular basis.

### **Section 3132.**

**Subsection 3132(a) is amended** to emphasize that all persons that correspond with inmates within the jurisdiction of the Department are expected to comply with existing

mail laws and regulations. The word “policies” was changed to “local rules” in the 2<sup>nd</sup> 15 Day Renotice.

**Subsection 3132(b) remains unchanged.**

**Section 3133.**

**Existing section 3133 is deleted** as the number of persons an inmate may correspond with is now included in Section 3134, General Mail Regulations, and to remove duplicative language already included in Section 3139. The information contained in this deleted section was not sufficient to constitute being in a section of its own, and was relocated for incorporation into General Mail Regulations for improved clarity and consistency.

**New section 3133 is relocated from existing section 3147, and amended** in its entirety. For clarity and simplicity, the existing text of section 3147 is deleted, and is rewritten as new section 3133 to improve the overall clarity of the Mail Article by placing the definitions of types of mail early in the mail regulations, by providing a larger scope of definitions of various classes and types of mail, as well as to delineate the disposition of various types of incoming and outgoing mail.

**New subsection 3133(a) in the originally submitted revision text has been amended** for clarity and accuracy. This subsection continues to provide definitions for the various classes and types of mail that are consistent with the various types of mail handled by the USPS. All mail, not just inmate mail that is received at the facility mailroom, will be delivered within the 7 calendar day requirement. The 7 day time frame has been selected as that time frame has, over the years, been the time frame that most consistently can be met by most institution mailrooms, given the volume of mail and available resources to process that mail.

**New subsection 3133(a)(1) has been amended** in the 2<sup>nd</sup> 15 Day Renotice to clarify that all First-Class mail shall be “delivered to the inmate”, not just “issued”. Further, such mail is to be delivered to the inmate within seven days of receipt “at” the mailroom, not “from” the mailroom.

**New subsection 3133(a)(3) has been amended** in the 2<sup>nd</sup> 15 Day Renotice to explain what constitutes a “known office of publication”. This is important in the event a publication is deemed to contain material prohibiting it from being allowed into an institution, such that a letter would have to be sent to the publisher informing them their publication is being returned and why, and their appeal rights. A particular publication can have more than one publishing office, but the USPS has deemed the office that contains the circulation records of the publication to be the central nerve of the company and hence to be held accountable should circulation records have to be inspected.

**New subsection 3133(a)(4) has been amended** for clarification as a result of public comments to expand the exception for type of package services an inmate may receive from personal correspondents from just “parole clothes” to now include special purchase “health care appliances”. This subsection will also provide the stipulation that these two types of special packages must be clearly marked on the outside of the package with either “Parole Clothes” or “Health Care Appliance”.

**New subsection 3133(a)(5) has been amended** in the 2<sup>nd</sup> 15 Day Renotice to clarify that the definition of an indigent inmate as provided in this section does not pertain to just section 3133, but to the entire mail article. This definition has been selected as it

most closely accommodates those inmates who are truly without funds, keeping in mind that most inmate job assignments pay little or even no compensation. The 30 day wait period is important as many inmates do receive amounts of funds from correspondents, and the State is responsible to marshal its resources.

**New subsections 3133(b)(1) & (b)(2) have been added** to establish the procedures for processing all incoming and outgoing inmate mail. These requirements have been delineated in the regulations to closely follow the USPS regulations.

**New subsection 3133(b)(3) has been amended** for consistency to include the word “non-confidential” in the first sentence, as this is the type of mail that is being addressed elsewhere in this article. The distinction between non-confidential versus confidential mail is important in the way that each is inspected for contraband. This subsection was added to establish the criteria for inspecting incoming packages and non-confidential mail to more closely align with the USPS regulations.

**New subsection 3133(b)(4) has been added** to establish that pre-approved vendor approved labels are not required for incoming books, magazines, or newspapers, which more closely aligns with the USPS regulations.

**New subsection 3133(b)(5) has been deleted** in the 2<sup>nd</sup> 15 Day Renote as it is duplicative language contained in subsection 3133(b)(3).

**New subsection 3133(c) has been amended** for clarification. While most legal mail is confidential in nature, it is incorrect to assume that it all will be confidential. The intent of this subsection is to discuss the processing of inmate trust account withdrawals that are enclosed in confidential mail. As such, the title of the subsection has been amended to clarify the particular process to be discussed. Confidential mail is typically sealed once an officer has inspected it. However, the Trust office process requires that the envelope must be left unsealed, and a process is also described for inmates who do not want to leave the first envelope unsealed. The envelope is left unsealed so that a voucher (check) to pay for a filing fee or other cost can be enclosed after the trust account withdrawal has been processed. The revision date of CDC Form 193 has been included in the 2<sup>nd</sup> 15 Day Renote.

**New Subsection 3133(d) has been added** to set forth the process of handling inmate mail that the USPS is returning to the institution as undeliverable. Mail can be returned to an inmate as undeliverable for a variety of reasons, and it is important to set forth the guidelines to promptly and properly deliver returned mail back to the inmate, and to ensure that contraband has not somehow been introduced into that mail prior to being returned.

**New subsection 3133(e) has been amended** to add the requirement that an institutional mailroom must, within a specified number of days, notice an inmate that an item of First Class Mail has not been accepted for mailing. The notice must be sent to the inmate and stipulate the reason why it has been detained, and include the disposition. Subsection 3133(e) has been added to discuss how unmailed correspondence must be handled, and to emphasize that inmate mail must be promptly mailed or returned to the inmate. The 5 day time limit was selected as it is deemed a reasonable time frame to require a mailroom to process returned mail to ensure the inmate does get it back, or at least notification regarding the delay.

**New subsection 3133(f) has been amended** for clarification to provide a distinction in the treatment of newspapers that are delivered by courier to an institution versus

newspapers that are delivered by the USPS when an inmate is absent from the institution. Courier delivered newspapers are not forwarded or held for an inmate that is absent from the institution for more than 72 hours. USPS delivered newspapers will have a forwarding address affixed to the newspaper, which shall be returned to the USPS for processing. Subsection 3133(f) has been added to the regulations to describe the process of forwarding mail to an inmate that has been transferred. This would include all types of mail, not just newspapers. This is an important subject as inmate transfers between institutions do occur and guidelines do need to be developed to ensure there is standardization within all institutions. The Department recognizes the requirement that inmate mail must be delivered timely, even if the inmate is temporarily or even permanently away from the institution. Also, frequently staff would return mail to the addressee when an inmate had simply been transferred or released to parole. Staff must make every effort to locate the inmate to timely forward their mail.

**New subsection 3133(g) has been amended** for consistency and clarification. As discussed above, not all legal mail is confidential in nature. It is the intent of the Department to set forth in these regulations the process for forwarding confidential correspondence in a timely fashion to a transferred inmate as such mail may be from a court, which is why this subsection was added to the regulations.

**New subsection 3133(h) has been added** to confirm that mail will be held at the institution mailroom for a specific time frame in an inmate's absence. One week was selected as generally in a long term court proceeding the inmate would be held at the county facility nearest the courthouse during the week and returned to the institution for the weekend, where they would receive all their mail.

#### **Section 3134.**

**Existing section 3134 is relocated** and renumbered to section 3138 to provide a more orderly and consistent sequence of the sections within the Article on Inmate Mail.

**New section 3134 is relocated** from existing section 3138, and amended in its entirety to provide a broad range of information on a variety of current general mail regulations beyond the disposition of mail, such as what items can be sent in to inmates, metered envelopes, the inspection of mail, contests, and other general mail regulations. This information is now also presented earlier in the regulations to provide clarity and consistency in the overall mail regulations.

**New subsections 3134(a)(3), (6), (7), and (9) in the originally submitted revision text have been amended** for clarity and accuracy. Subsection 3134(a) has been added as it details a number of enclosures that correspondents can send to inmates. Although this list is not all inclusive, it represents the most common enclosures sent in by correspondents. Photographs are the most common enclosure, although the Department must be very careful in restricting the type of photo that can be sent in as some, such as Polaroid's, can have small amounts of contraband secreted within. Subsection 3134(a)(3) has been amended to more accurately specify that blank greeting cards cannot include attachments or stamps for safety and security reasons. Subsection 3134(a)(6) has been amended by being removed, as it was repeated in subsection 3134(a)(7), which has been clarified to include tablets of writing paper, noting the restriction on cotton paper for security reasons. Subsection 3134(a)(9) has been amended to include colored legal paper that may be required by a court.

**Subsection 3134(a)(10) has been added** for clarification. Even though subsection 3134(a) lists items that can be enclosed in First Class Mail, and indicates that list is not

all-inclusive, there have been sufficient public comments to warrant adding to the list the additional items noted in subsection (10).

**Subsection 3134(a)(11) has also been added** for clarification. The Department has long been aware that there have been some correspondents who have introduced contraband into the institution within books of stamps included in correspondence or on the backs of stamps. The proposed regulatory requirement that stamps only be purchased and sent directly from the USPS elicited the most public comments, requesting that correspondents be allowed to send inmates stamps as in the past. The Department determined that they would not proceed with the proposed revision to have stamps only sent in by the USPS, and has now proposed the stipulation that a correspondent can send up to 40 postage stamps enclosed in a letter. The total of 40 stamps was selected, as was 40 postage embossed envelopes in (a)(4) above, as 40 stamps is two books of stamps and is deemed a reasonable number of stamps for a correspondent to send to an inmate.

**New subsection 3134(a) has been amended** for clarification and accuracy to include the Vendor Package Program where inmates can obtain photo albums, as well as to include the requirement that the Department must notice inmates when any unauthorized mail is returned to the sender. Also, the weight limits for the several classes of mail have been included and mirror the USPS regulations.

**New subsection 3134(b) has been added** to describe the conditions that correspondents must adhere to when sending an inmate metered reply envelopes. The conditions conform to the requirements set forth in the USPS regulations.

**New subsection 3134(c)(4) has been amended** for consistency and in response to public comments. New subsection 3134(c) has been added to set forth the guidelines regarding the inspection and processing of incoming and outgoing packages. In the original revision text the Department determined that the mailrooms were to deliver packages, publications, and special purchases to inmates within 14 business days. In the amended text the 14 business days was amended to 15 calendar days, which effectively will mean a quicker processing time for the inmate recipient. Also, this delivery time frame is now extended to all publications, including books, to which the Department will now adhere. Subsection 3134(c)(2) now deletes the reference to section 3190 and the words "departmentally-approved vendors", in the 2<sup>nd</sup> 15 Day Renote, as they are somewhat ambiguous in this context. Subsection 3134(c)(4) has been amended for clarity, and to provide several examples of what constitutes a holiday season, in the 2<sup>nd</sup> 15 Day Renote.

**New subsection 3134(d) has been added** to instruct inmates that they cannot participate in any contests as inmates are not allowed to participate in any form of gambling.

**New subsection 3134(e) has been added and amended** for clarity by adding several items to the list of allowable inmate manuscripts, such as paintings, sketches, and drawings, but then limiting the list of allowable inmate manuscripts to just those noted in the amended regulations. Inmates who are taking the time to create any of the items listed in this subsection should be recognized that this is their property and it must be treated with respect and handled as if regular mail.

**New subsections 3134(f) through 3134(i) will now be deleted** from section 3134 and moved into new CCR section 3134.1 entitled "Processing of Publications," as noted in the 2<sup>nd</sup> 15 Day Renote. This has been done due to the importance of the subject

matter, Processing Publications, and to provide more information about disapproved publications.

**Subsection 3134(f) has been deleted** from section 3134 and has been relocated to new section 3134.1 and renumbered to (a). This subsection was previously amended for clarity by including a book distributor as an allowable source by which a third party can order, and have shipped, a publication for an inmate. This subsection is further amended in the 2<sup>nd</sup> 15 Day Renotice to remove language regarding a centralized list of disapproved publications, as this information is now enumerated in new subsection 3134.1(e). Further, publications must be mailed directly from a book store, book distributor or a publisher for security reasons. Previously they could be sent from an approved vendor, but the frequent introduction of contraband into those publications has eliminated that procedure and thus the elimination of the requirement of an approved vendor label.

**New subsection 3134(g) has been added** and renumbered to 3134.1(b) to discuss the processing and inspection of magazines and newspapers, and to explain that certain items can be removed without the inmate being notified. These items are typically promotional in nature and on the surface may seem innocuous, but the items or the container/wrapper around it may be deemed contraband pursuant to section 3006. This subsection has been further amended in the 2<sup>nd</sup> 15 Day Renotice by acknowledging there may be other attachments listed to magazines and newspapers that staff may deem contraband that must be removed.

**New subsection 3134(h) has been added** and renumbered to 3134.1(c), and amended for clarity with respect to the processing and inspection of incoming books to inmates, and to include any enclosures that might be included within the book. Once again, enclosures might be deemed contraband, and hard book covers must be removed as small amounts of contraband have been secreted in the covers in the past. This subsection has been further amended for clarity in the 2<sup>nd</sup> 15 Day Renotice.

**New subsection 3134(i) has been added** and renumbered to 3134.1(d), and amended for clarity and consistency, as noted in the 2<sup>nd</sup> 15 Day Renotice. When notifying a publisher by letter that their publication has been disapproved for delivery, the letter must not only include the name(s) of those impacted, but also the CDCR number, as well as information on how the publisher can appeal the decision to disallow the publication into the institution. To be consistent with the time frames with which to deliver publications to inmates, the notification letter must be mailed to a publisher no later than 15 calendar days of receipt of a censored publication. Language pertaining to how long a mailroom must keep information pertaining to the disallowance of a publication has been simplified; the only timeframe a mailroom must keep such information is for a seven year period, which is a standard legal time frame for record retention.

**New subsection 3134(j) has been added** and renumbered to 3134(f) in the 2<sup>nd</sup> 15 Day Renotice, due to the removal to of subsections 3134(f) – (i), to stipulate that inmates can correspond with as many correspondents as they want, unless restricted elsewhere in this article, Inmates are to be encouraged to correspond with as many family and friends as they have resources and time to do so, to facilitate their rehabilitation back into society.

**New subsection 3134.1(e), entitled “Centralized List of Disapproved Publications,” has been added** in the 2<sup>nd</sup> 15 Day Renotice. The information contained in this new subsection is an elaboration of information previously contained in

subsection 3134(f). While it is recognizable that a number of publications include content of a sexual nature or describe weaponry, just to name a few of the type of publication content that would be disallowed, the Department is striving to provide consistent guidance statewide as to what is not allowed into the institutions, as well as to provide some relieve for those publishers that would want to appeal the Departments decision to exclude their publication. The decision to send a letter to a disallowed publisher within 15 days is merely to be consistent with other 15 day requirements within this Article.

### **Section 3135.**

**Subsection 3135(a) is amended** to remove the requirement that all nonconfidential correspondence shall be read by staff, as that requirement is included in subsection 3133(b)(3). Also, exceptions to disallowing disturbing correspondence are no longer allowed, as it has been determined there were few if any such exempted items being considered or reviewed. Finally, language pertaining to documentation of the reasons for withholding mail has been removed, as this information is provided more succinctly in section 3136.

**Subsection 3135(b) is amended** to provide several changes for format and updated terminology.

**Existing subsection 3135(c) is amended, renumbered, and relocated to 3135(e).**

**New subsection 3135(c) is adopted** and is an expansion of the discussion in subsection 3135(b) regarding value judgments pertaining to mail, with detail on the various types of mail that must be disallowed regardless of value judgments of staff to emphasize the safety and security of the institution. While the list of disallowed items is not all inclusive, it is representative of the types of disturbing or offensive comments, such as language that contains escape plans or coded messages that have been attempted to be mailed but cannot be mailed.

**New subsection 3135(d) is adopted** to expand on the subject of disallowed mail to specifically disallow virtually all obscene material, or any material that would appeal to the prurient interest. The Department acknowledges the difficulty in adopting some standard as to what constitutes obscenity, and further acknowledges the necessity for setting forth such standards to more completely achieve its desired rehabilitative goals for the inmate population. Every effort will be made, however, to be fair and consistent with the application of just what constitutes obscene material throughout the state, as further delineated by the Department providing each institution a centralized list of disallowed publications as set forth in new subsection 3134.1(e). Subsection 3135(d)(7) has been amended in the 2<sup>nd</sup> 15 Day Renotice to clarify that it is conduct of a sexual nature with a minor that will not allow a publication to enter an institution.

**New subsection 3135(e) is relocated** from existing subsection 3135(c) and amended for clarity and updated terminology.

### **Section 3136.**

**Existing subsection 3136(a) is deleted and new section 3136(a) is added** to remove vague language, and to provide direction to staff as to how to notice an inmate of disapproved mail. Incoming or outgoing mail that is clearly in violation of sections 3005 or 3135 can easily be disapproved by staff at the Correctional Captain level. Such mail that is not easily identifiable as being in violation must be reviewed at a higher level, an



important requirement to protect the rights of both the inmate and their correspondent. Additional changes have been made in the 2<sup>nd</sup> 15 Day Renotice for clarity.

**Existing subsection 3136(b) is deleted** and new section 3136(b) is added to remove vague language, and to delineate actual time frames of how long disapproved mail must be retained, particularly if a lawsuit results due to the disapproval of mail, before it can be disposed. Additional changes have been made in the 2<sup>nd</sup> 15 Day Renotice for clarity, and to provide simplification with the document retention policy pertaining to disapproved mail, as well as to set out that the Form 1819 and supporting documents shall be maintained for a minimum of 7 years. This time frame was selected as it is a generally accepted legal time frame within which to initiate legal action and for document retention.

### **Section 3137.**

**Section 3137(a), (b), and (c) are amended** for clarification and changes of updated terminology. For example, the word “Director” is now changed to “Director of the Division of Adult Institutions (DAI)”. Additional changes have been made in the 2<sup>nd</sup> 15 Day Renotice for clarity.

### **Section 3138.**

**Existing section 3138 has been relocated** and renumbered to section 3134, and has been amended in its entirety.

**New section 3138 has been relocated** from existing section 3134, and is renumbered and amended in its entirety to expand upon the writing materials and prepaid envelopes that an indigent inmate is allowed as well as the restrictions that are placed on indigent inmates. There is also expanded language providing direction to staff regarding indigent inmate’s access to the courts.

**New section 3138(a) has been added** to clarify the extent of writing supplies and envelopes with postage that will be supplied to an indigent inmate, along with the restriction that the indigent inmate cannot trade or transfer those supplies with other inmates. A total of 5 indigent envelopes were selected as the Department determined this would a sufficient amount of writing material and envelopes for an indigent inmate to maintain ties with family and friends.

**New subsection 3138(b) has been amended** for accuracy regarding the process by which an indigent inmate may mail correspondence weighing more than one ounce. The originally amended text has been removed as it is duplicated in subsection 3138(g).

**New subsections 3138(b)(1) and (2) have been amended** for clarity and have been renumbered to subsection 3138(b). Indigent inmates must be allowed to have access to the courts or to the Attorney General, and they may request to be allowed to mail any type of correspondence that weighs more than one ounce.

**New subsection 3138(c) has been added** to explain the process of an indigent inmate that is mailing foreign correspondence. This exact language was formerly included in section 3134 and remains accurate, but was included as new language for ease of numbering.

**New subsection 3138(d) has been added** to clarify that indigent envelopes become the property of the inmate, and they are allowed to utilize them regardless of their current financial status.

**New subsection 3138(e) has been added** to clarify that only the Trust Office is to process an inmate's request for indigent envelopes. This information in the regulations puts the inmate on notice of the appropriate office to submit their request for indigent as the Trust Office maintains the inmates trust accounts.

**New subsection 3138(f) has been added** to stipulate that unauthorized inmates caught using an indigent inmate envelopes shall be subject to the disciplinary process. Use/theft of an indigent envelope by an unauthorized inmate would be tantamount to the theft of actual postage stamps from another inmate.

**New subsection 3138(g) has been added** to clarify that an indigent inmate must use their indigent envelopes when corresponding with their attorney or other confidential correspondent. The inmates own attorney does not automatically warrant privileged treatment in the same way that the courts or the Attorney General does.

**New subsection 3138(h) has been added** to expand beyond subsection 3138(g) in that an indigent inmate shall have free and unlimited mail to any court or the Attorney General. The Department recognizes that it is the law that all inmates have access to the courts and the Attorney General. Language contained in subsection 3138(h)(1) has been struck that is duplicative of other language contained in the section.

**New subsection 3138(i) has been added** to establish that each institution shall establish local procedures for the issuance of writing supplies to indigent inmates, as this may vary from institution to institution due to their physical plant.

## **Section 3139.**

**Section 3139 title is amended** to include parolees and probationers, in addition to other inmates, with which inmates may correspond.

**Initial paragraph of section 3139 is deleted** as this language is vague and is now covered much more extensively in a major expansion of the subject matter in this section.

**Subsection 3139(a) is deleted** and new section 3139(a) is added to remove vague language and to clarify what approval's are needed, and from whom, for inmates, parolees, and probationers to correspond with each other, as well as to provide updated terminology. The necessary approvals would require a thorough file review of the inmates past and current gang related activity to determine if they should be allowed to correspond with any of the persons listed in this subsection, and thus not compromise the safety and security of the institution and the public.

**Subsection 3139(a)(4) has been amended** for clarity and accuracy. Former inmates that have been discharged from the custody and jurisdiction of the Department will continue to be allowed to correspond with current inmates or parolees. Although this restriction was included in the revision text, the Department has determined that it is not appropriate to restrict individuals that have successfully discharged from the Department in their correspondence, and that tracking such individuals would be too expensive and time consuming.

**Subsection 3139(b) is deleted** and new section 3139(b) is added to again remove vague and outdated language, and to begin to expand upon the process by which an inmate must obtain permission to correspond with other inmates, parolees, or probationers. This subsection has been amended in the 2<sup>nd</sup> 15 Day Renote for clarity, to remove a form title that is not an authorized CDCR form, and to delineate the criteria by which inmates may correspond with other inmates, parolees, and probationers. While there may be some other reason why an inmate may not be allowed to correspond with the persons listed in the subsection, such as planned criminal activity, the Department's experience has been that person's associated with a gang or terrorist related group are more intent on planning some kind of criminal activity.

**Subsection 3139(c) is adopted** to expand upon the process involved when an inmate initiates a request for correspondence approval, and the requirements for processing an inmate's Request for Correspondence Approval, Form 1074, (Rev. 08/87), both if the request is approved or if it is denied. This approval process is laid out in great detail in this subsection, noting there are 10 steps in the process of approving or disapproving such correspondence requests. This information was previously not laid out in any such detail, resulting in the various mailrooms conducting their review process differently, with the possibility of compromising some aspects of an institutions security. The primary purpose of listing the 10 steps is to ensure the review process occurs and is well documented, informing the inmate in writing of the outcome of the review, and the retention process of that documentation. This subsection has been amended in the 2<sup>nd</sup> 15 Day Renote to also remove a form title that is not an authorized CDCR form. Subsection 3139(c)(3) has been amended in the 2<sup>nd</sup> 15 Day Renote to delineate that a particular form will be retained in a C-File or Field File.

**Subsection 3139(d) is adopted** to clarify that there are no limitations on the number of times inmates, parolees, or probationers can correspond with one another, which is an expansion of information that was previously contained in section 3133.

**Subsections 3139(e) through 3139(i) are adopted** to provide additional information or restrictions on correspondents located in security housing units, correspondence between family members, inmate transfers, and unapproved correspondence, to ensure the safety and security of the institution and the public. "Security" was changed to "Services" in the 1<sup>st</sup> 15 Day Renote for accuracy when listing "Psychiatric Services Unit". Subsection 3139(e) has been amended in the 2<sup>nd</sup> Day Renote for clarity by emphasizing that the restrictions on the correspondence discussed in this subsection are limited to the segregated housing units listed. Subsection 3139(f) has been amended in the 2<sup>nd</sup> Day Renote for clarity, and to clarify that correspondence as being discussed in this section can be restricted if it violates other aspects of the regulations.

**New subsection 3139(j) is adopted** to provide amended information that was previously included in section 3140. This information is being incorporated into section 3139 as it also deals with correspondence between inmates, specifically a related group of inmates known as former inmates. This subsection is amended in the 2<sup>nd</sup> 15 Day Renote by removing language that is duplicative of CCR section 3139(a).

## **Section 3140.**

**Existing section 3140 title is deleted** and renamed to "Funds Enclosed in Correspondence" to provide information about how staff are to process funds that are enclosed in correspondence, an important subject that is not currently addressed in existing regulations.

**Initial paragraph in section 3140 is deleted** as this information is more appropriate for inclusion into discussion of correspondence between inmates located in section 3139.

**Subsection 3140(a) is adopted** to identify the types of funds that can be mailed to an inmate, how the funds are to be handled, and how to properly notify the inmate that funds were received for placement into his trust account. The type of funds an inmate may receive, such as a check or a money order, are detailed along with the requirement that they must be made out to the Department with the inmates name and number included on the face of the check to facilitate the deduction for victim restitution prior to the remaining amount being deposited into the inmates trust account.

**Subsection 3140(a)(2) has been added** to acknowledge that funds can be received from another inmate, provided they meet the criteria set forth in section 3139.

**Subsection 3140(a)(3) has been amended** from the originally proposed text by its removal from the proposed revision text. The Department has reevaluated the previous requirement that funds can only be sent to an inmate by family members, and has determined the requirement is too restrictive. The Department received numerous comments on this restriction and therefore lifted that restriction, and described of turning the correspondents envelope into a receipt noting that funds had been received.

**Subsection 3140(a)(4) has been amended** in the 2<sup>nd</sup> 15 Day Renote for clarity and accuracy, and to eliminate language that is vague. It is important to note in the regulations that an inmate shall be noticed in writing that cash was received in their mail and that it is being returned to the sender. Money is considered contraband pursuant to subsection 3006(b), and cannot be sent into the inmate. Cash is encouraged to not be sent into the institution to reduce the temptation any mailroom staff may have, and cash is not processed the same as checks as the Department does not provide training to staff about how to identify counterfeit money.

**Subsection 3140(a)(5) has been added** to provide a standardized procedure statewide for how staff are to account for the days remittances, which will assist in the deposit process to each inmates trust account.

**Subsection 3140(b) is adopted** to describe the eligibility process that inmates incur when they receive government checks such as social security, welfare, or tax refund checks. Inmates lose much of their citizenship rights once they are incarcerated, including their right to generally receive a variety of government checks. However, the Department will not automatically just return such checks, but instead has laid out in subsections 3140(b)(1) through (b)(3) the requirement that an institution shall appoint a facility representative who will assist outside agencies in determining an inmates eligibility to receive such checks, on a case by case basis. As such, the eligibility process is not one where all government checks are automatically returned, but rather considered for possibility for receipt by the inmate.

**Subsection 3140(c) is adopted** to describe the process involved when an institution receives a government check for an inmate that is deceased or has been discharged from the department. It is possible that correspondence for an inmate that contains a government check might be received where the inmate has been deceased, discharged, transferred, or paroled. The steps are laid out in subsection 3140(c) through (c)(2) as to how to return that correspondence to the sending agency, or to the correct parole office. Every effort is to be made to locate the inmate to ensure that if possible a determination can be made to determine the inmate's eligibility to receive the government check.

**Subsection 3140(d) is adopted** to acknowledge that not all funds received will be in the form of a money order or certified check, and must be processed differently. Money orders, checks, or certified checks will only be released for spending by the inmate once the funds have cleared the bank, to protect the Department from financial instruments that do not sufficient funds.

**Subsection 3140(e) is adopted** to provide a strict return policy for correspondence that is received that contains foreign currency. It is important to note there is a distinction between domestic correspondences received with cash versus foreign correspondence received with cash. Domestic correspondence containing cash merely has the cash returned to sender, with the correspondence to be forwarded to the inmate, whereas foreign correspondence containing cash is returned to sender in its entirety. The Department contends that returning cash alone to a foreign correspondent would make it much more likely to be vandalized, and it is incumbent upon all inmates to inform their correspondents of all mail rules and regulations.

### **Section 3141.**

**Existing subsection 3141(a) is deleted** as the language is vague as well as duplicative.

**Existing subsection 3141(b) is renumbered to 3141(a) and amended** for clarity.

**New subsection 3141(b) is adopted** to stipulate that confidential mail is not limited to First Class mail standards, and that it will be processed regardless of weight or postage class. This is to emphasize that confidential mail carries more significance than regular correspondence as it may be legal in nature and therefore must be processed and delivered to the inmate.

**Existing subsection 3141(c) is amended** to include updated terminology and to provide more specific information as to what qualifies as a confidential correspondent. Subsection 3141(c) has been further amended for consistency and accuracy in the 2<sup>nd</sup> 15 Day Renotice. As confidential mail may be correspondence from the courts or the Attorney General's office, it cannot be restricted in the same manner that regular First Class mail can be restricted. Subsection 3141(c)(7) has been amended for clarity by establishing that an inmate may correspond confidentially with all members of a foreign consulate. Subsection 3141(c)(8) has been amended for accuracy by including the Department's Ombudsman's Office in the list of persons that an inmate may correspond to confidentially, and for accuracy to reflect the changes in division names or to titles to current names or titles. Subsection 3141(c)(9) has been amended in the 2<sup>nd</sup> 15 Day Renotice to clarify what constitutes a legitimate legal service organization. The original 4 legal organizations contained in the original text remain, although they are formatted differently for clarity, and the new legal organization entitled "California Appellate Project" has been added.

**New subsection 3141(d) is adopted** to provide additional information about how incoming confidential mail must be addressed, and the steps staff must take if there is a question as to the legitimacy of incoming confidential mail. The Department has experienced an increase in the number of confidential correspondents that are not truly confidential in nature. This new language will provide staff an extra resource to ensure that such confidential mail is truly confidential, or merely posing as such to escape closer scrutiny.

### **Section 3142.**

**Section 3142 is amended** for clarity.

**Subsection 3142(a) is amended** to stipulate that the address of an attorney that an inmate is mailing confidential mail to must match the address listed with the State Bar. Increasingly inmates have been trying to send correspondence as confidential when it is not. If the inmate is unsure of the correct address of an attorney, they can direct regular correspondence to their attention to get the correct address.

**Subsection 3142(b) is amended** for clarity and updated terminology, noting that an inmate's identification number must be included in all outgoing correspondence. This had not been included in existing text. For security reasons it is mandatory that all outgoing mail include the inmate's identification number. This informs the recipient of the mail that it is from an inmate incarcerated in a state prison. Also, it is possible to have two or more inmates's incarcerated in the same housing unit with the same last name, so it is important to have the identification number to distinguish between them. Also, inmates have been using the confidential mail process inappropriately by mailing it to nonconfidential correspondents, and staff has not caught the lack of the identification number. This added language also notifies staff of this requirement.

**Subsection 3142(c) is amended** for clarity.

**Existing subsection 3142(d)(1) through 3142(d)(4) is deleted** as the process for inspecting and processing outgoing confidential mail has changed as set forth in new subsection 3142(d).

**Subsection 3142(d) is amended** to reflect new procedures for the inspection and processing of outgoing inmate confidential mail. Subsection 3142(d) has been further amended for clarity to provide information to staff on the correct handling of confidential mail to ensure that the contents of the mail are sufficiently inspected but are not read due to their confidential nature. While much of the original text of this subsection is now contained in new subsection (d), there have been sufficient security changes in the process to warrant describing it as new language.

**New subsection 3142(e) is adopted** to describe the procedure for handling prohibited material that may be located in outgoing confidential mail. Prohibited material might be some kind of coded letter that stood out as not being ordinary correspondence, or an escape map. No description of what constitutes prohibited material was provided in the text, as it is difficult to anticipate just what form it would take. But an experienced officer would recognize such material for what it is, and this text provides them the authority to confiscate the prohibited material.

**Section 3143.**

**Existing section 3143 is amended** to add language stipulating that an attorney's address must match that listed with the State Bar. Language is deleted from section 3143 that is no longer relevant or current. Additional information is added to this subsection describing how incoming confidential mail must now be processed. Changes to the processing and handling of confidential mail have become necessary due to increasing abuse of this type of mail for gang related activities.

**New subsections 3143(a) and (b) are adopted** to describe the process by which staff shall deliver confidential mail to an inmate, and how the inmate will acknowledge receipt in a designated logbook of such mail. A logbook is kept for security reasons to keep a

running log of just who is sending an inmate confidential mail, and is included in the text to provide standardization for all mailrooms statewide of this requirement.

#### **Section 3144.**

**Section 3144 is amended** for clarity and to delete language that is duplicative within the section. Section 3144 has been further amended for accuracy and clarity. The Department has determined that all confidential mail, particularly incoming confidential mail, must be opened to be inspected for contraband. Therefore the option of opening or not opening the mail for inspection purposes has been removed.

**Subsection 3144(a) remains unchanged.**

**Existing subsection 3144(b) has been relocated and renumbered** to new subsection 3144(c).

**New subsections 3144(b) through subsection 3144(b)(4) are adopted** to provide continuity in the discussion of the inspection of confidential mail and the actions for suspension of confidential mail privileges that are required if incoming confidential mail is deemed inappropriate or contains contraband. It should be noted there are two types of violations being discussed in this subsection. The first are non-serious violations, which would include something as simple as enclosure of some kind of contraband or the misrepresentation of the sender's identity. Of course, if the enclosure of contraband was something as serious as drugs, that could be chargeable as a felony and would be considered a serious violation. A serious violation are those that could be charged as a felony that actually jeopardized safety and security. Amendments have been made in the 2<sup>nd</sup> 15 Day Renotice to clarify that is the Director of DAI, not the Secretary, who must be petitioned for reinstatement of confidential mail privileges.

**New subsections 3144(c) through 3144(c)(2) are adopted** from existing subsection 3144(b) and remain unchanged in their entirety. Subsection 3144(c)(1) has been further amended to reflect the change in the title of the leadership of the Department to Secretary. Amendments have been made in the 2<sup>nd</sup> 15 Day Renotice to clarify that is the Director of DAI, not the Secretary, who must be noticed if any case of misrepresentation of identity indicates a violation of the law.

#### **Section 3145.**

**Section 3145 remains unchanged.**

**Subsection 3145(a) is amended** for clarity and updated terminology.

**Subsection 3145(b) is amended** to reflect a simplification in the process by which confidential mail is returned to sender, and hence to delete language that reflected a more complex process. This subsection is further amended in the 2<sup>nd</sup> 15 Day Renotice for clarity regarding the disposition of enclosures in confidential mail. Enclosures included in confidential mail are not allowed into the institution without being examined for security reasons. Pursuant to subsection 3191(c), they can be returned to the sender at the inmate's expense, donated to charity, or rendered useless and destroyed.

**Subsection 3145(c) is amended** for updated terminology, and to provide clarification of what circumstances allow for inclusion of mail into an inmates central file. This subsection has been further amended in the 2<sup>nd</sup> 15 Day Renotice for clarity to explain the type of mail that an inmate's counselor might include in an inmate C-file. Due to the

voluminous size of some inmates C-file, care is given to not just capriciously include any correspondence an inmate may request to be included in their C-file, but to limit such items to the criteria set forth in subsections 3145(c)(1) through (3), as well as to allow an inmates counselor some discretion as to whether a certain item is relevant and should be included.

#### **Section 3146.**

**Section 3146 remained unchanged** at the time of the initial rulemaking filing. However, this section has now been amended to place an additional requirement on the Department to ensure a translation of a correspondence occurs timely, and if not the correspondence is delivered to the inmate untranslated. That additional language was not show as underline (added language) in the previous regulations, and it has been dotted underlined to allow the reader to note the additional translation requirement on the Department.

#### **Section 3147.**

**Existing section 3147 is relocated and renumbered to section 3133, and amended** in its entirety.

#### **2<sup>nd</sup> 15 DAY RENOTICE:**

**Public Comment period was May 29, 2008 through June 14, 2008.**

A 2<sup>nd</sup> 15 Day Renotice was provided to written and oral commenter's and posted to Department web sites, and text was available for inspection in the Regulation and Policy Management Branch. A total of 5 written comments were received.

#### **COMMENTER #1:**

**Comment A:** Commenter expressed gratitude that these regulation changes are being promulgated due to problems he is experiencing at his facility with newspapers not being forwarded as they should when he is out to court, and with other mail items being handled in a manner that is inconsistent with other facility mailrooms.

**Accommodation:** None.

**Response A:** The Department thanks commenter for their agreement that these regulation changes are necessary to standardize mailroom procedures throughout the state. Commenter is advised that the Department conducts routine compliance audits of all facility operations to determine if they are compliant with current regulations and procedures.

#### **COMMENTER #2:**

**Comment A:** Commenter states that in section 3134.1 the word "items" would be more appropriate if changed to "publications."

**Accommodation:** None.



**Response A:** While commenter's suggestion does not lack merit, the Department will leave the current wording. The word "items" is described in more detail later in the sentence, which should be sufficient to the reader in detailing what items are considered as periodicals.

**Comment B:** Commenter states that the sentence in section 3141.1(e) that begins with the language "Examples of publications that would be included..." be stricken, as it would tend to give incentive to staff to decide for themselves what inmates should receive.

**Accommodation:** None.

**Response B:** The Department does not agree that this sentence should be stricken. The centralized list of banned publications is developed by staff located in Department's headquarters, updated as appropriate, and distributed statewide. This proposed language is important as it advises staff of the criteria to be utilized in an effort to develop as standardized a list as possible of banned publications. The proposed language will remain unchanged.

**Comment C:** Commenter requests that in subsection 3135(c)(10), the word "an" should be changed to "the." Commenter also expresses concern that currently no maps are being allowed that are contained in publications that commonly contain maps, such as National Geographic.

**Accommodation:** None.

**Response C:** The Department contends that the commenter's suggested word change is nonsubstantive and would not change the meaning of the sentence. Also, once the proposed regulations are adopted, the only maps that would not be allowed would be maps that depict any area within a ten-mile radius of an institution/facility, which would cover most of the state of California.

**Comment D:** Commenter questions how an inmate or a publisher could challenge the placement of a publication on the disapproved list of publications, and whether that list would include some indication of just what aspect of the publication had caused it to be placed on the list.

**Accommodation:** None.

**Response D:** The process by which an inmate can challenge the Department's decision to place a publication on the banned list is described in section 3136. While the proposed regulations are very clear as to providing as many examples as possible as to what would be banned, any publisher would know that they could challenge the decision to ban their publication by writing directly to the Secretary of the Department. The Department would include an indication on the banned list just what category caused the publication to be banned.

**Comment E:** Commenter requests that writing paper other than just plain white paper, such as paper that is preprinted from some organization, be allowed to be sent to an inmate for their use.

**Accommodation:** None.

**Response E:** The Department contends that writing paper that does not serve a legitimate penological interest would not be allowed. The concern here is that an inmate might be trying to misrepresent them self to a correspondent when using a preprinted stationary.

**Comment F:** Commenter requests that the responsibility of inspecting/processing outgoing confidential mail should be extended to the librarian, not just custody staff, which could speed up the process.

**Accommodation:** None.

**Response F:** Librarians are not trained to the extent that custody staff are with respect to security matters. Custody staff would be much more aware if the confidential mail were being used inappropriately, such as using this type of mail to relay gang related information.

**COMMENTER #3:**

**Comment A:** Commenter expresses concern that when transferred to another institution, and subsequently being indigent for a time, he was not allowed to use indigent envelopes.

**Accommodation:** None.

**Response A:** The Department contends that indigent inmates must be allowed to use indigent envelopes, unless somehow they have abused that process and have temporarily lost that privilege. These proposed regulations, once promulgated, will require that each institution/facility abide by this requirement. However, in the interim commenter should utilize the inmate appeal system to rectify this problem.

**COMMENTER #4:**

**Comment A:** Commenter contends that hardcover books should have their cover removed in the mailroom, not in front of the inmate by housing staff.

**Accommodation:** None.

**Response A:** By allowing the cover to be removed in the presence of the inmate, the inmate is being afforded the opportunity of making a final decision as to whether the cover should be removed, or the book returned to sender. Removal of the cover is essential for security reasons as contraband could be concealed within the hard cover. Staff are to make every effort to try to keep the book as intact as possible. There will be no change to the proposed language.

**Comment B:** Commenter states that subsection 3133(b)(2) is unclear with respect to outgoing mail that is addressed to an inmate, as the subsection does not stipulated that the recipient's department identification number must be on the outgoing mail.

**Accommodation:** None.

**Response B:** Actually that issue is addressed in subsection 3133(b)(1), dealing with incoming mail. Any inmate receiving mail, regardless of who from, must have their number marked on the envelope and the correspondence. There will be no change to the proposed language.

**Comment C:** Commenter states that subsection 3134(a) is confusing with respect to an inmate's ability to appeal when unauthorized incoming mail is returned to sender, and the inmate doesn't know just what was unauthorized.

**Accommodation:** None.

**Response C:** The items that are allowed to be included in incoming First Class mail are listed in subsection 3134(a). Unacceptable mail will be returned to the sender with the notation that the correspondence contained some kind of unacceptable content/item. Even though the inmate is noticed of this development, it would be incumbent upon the sender to determine how to correctly send correspondence into the institution. The inmate is informed of the returned correspondence, and can certainly inquire from the sender as to what was returned, and can appeal at that point.

**COMMENT #5:**

**Comment A:** Commenter states that while they agree that in section 3133 there should be a definition of what "periodicals" are, adding detail about a "known office of publication" in subsection 3133(a)(3) is unnecessarily confusing.

**Accommodation:** None.

**Response A:** The Department has determined that it is important for the reader to know what constitutes a publication, as well as to have some idea of how a publisher could be contacted. Originally there was no further explanation of what a "known office of publication" constituted, but the Department has endeavored to provide some explanation as it is important that the Department be able to communicate with a publisher. Also, this explanation may not be consistent with the USPS regulations on what constitutes a "known office of publication", but the Department has determined that this is the most accurate for its notification purposes.

**Comment B:** Commenter requests that language that is currently contained in subsection 3133(b)(4) regarding a departmentally approved vendor should also be duplicated in subsection 3134.1(a) for more emphasis.

**Accommodation:** None.

**Response B:** The Department contends that duplicating language, already contained in subsection 3133(b)(4), in section 3134.1 is unnecessary and would not provide any further emphasis or clarification to warrant adding that language.

**Comment C:** Commenter is requesting several changes to the wording in subsection 3134.1(d). Commenter is recommending that the wording in the second sentence be changed, that a notification letter be sent to a publisher within 3 business days informing them their publication has been placed on the banned list of publications, and that the material relative to a lawsuit be retained for two years.

**Accommodation:** None.

**Response C:** The Department contends that the recommended changes commenter has suggested for the second sentence are not at all clear, and will leave the proposed language as currently written. The Department further contends that the commenter's recommended change from 15 calendar days to 3 business days with which to notice a publisher that their publication has been banned is unrealistic given the resources

available within an institution mailroom. Commenter should in fact agree that the requirement that the publisher be noticed within 15 days is an improvement over current mailroom practice. And lastly, the Department does not agree that it is necessary to include language specifying the length of time that material relative to a lawsuit should be retained. Records retention requirements are well laid out in state manuals governing lawsuit records, and the Department is aware of and adheres to those requirements.

**Comment D:** Commenter further objects to language contained in subsection 3134.1(d) that permits institutions to request from the Division of Adult Institutions that publications be added to the centralized list of banned publications, stating that there is no clear guideline of just how that review would be accomplished. Commenter is also recommending language to require a mailroom to notice a publisher each time their publication is disallowed.

**Accommodation:** None.

**Response D:** The Department contends that spelling out the guidelines of how a review is to be conducted of an institution's request to add a publication to a banned list is completely unnecessary to provide in these regulations, as this is strictly an administrative function and does not meet the regulatory test for inclusion into the regulations. Further, adding the requirement that a mailroom must notice a publisher each time their publication is being disallowed is an unnecessary requirement, and the associated cost would provide no redeeming benefit to the state or to the publisher. Generally when a publication is being disallowed and is to be included on the banned publication list, that publisher will not continue to send future publications to an inmate. Also, the inmate will be noticed of the disallowance, and can make arrangements with the publisher for a refund of any further publications that could not be sent.

**Comment E:** Commenter is requesting that language be added in subsection 3134.1(e) to the requirement that institutions may not add publications to the list of banned publications, as well as adding language regarding the records retention of lawsuit related material.

**Accommodation:** None.

**Response E:** The Department contends that duplicating language already contained in a previous subsection is unnecessary and does not provide any further clarity or accuracy to the proposed regulations to warrant the change. Also, as stated in a previous response, the Department is already governed by records retention time limits.

**Comment F:** Commenter objects to the time limits these proposed regulations will set with respect to the delivery of publications to the inmate of 15 calendar days, and the delivery of First Class mail within 7 calendar days. Commenter recommends that all types of mail be delivered to an inmate within 3 business days.

**Accommodation:** None.

**Response F:** The Department agrees that all types of mail should be delivered within 3 business days. Institution/facility mailrooms pride themselves in their ability to deliver mail as quickly as possible. Commenter should note that the time frames listed in the proposed regulations are the maximum periods of time that mail must be delivered, and if the mailroom is unable to meet those deadlines then it must determine how to rearrange available resources to meet or surpass these minimum standards.

**Comment G:** Commenter recommends several minor revisions to the proposed text in subsection 3137(b) pertaining to the disposition of inmate property after a third level of appeal. Commenter states that the language in subsection 3137(b) conflicts with the language contained in subsection 3136(b). Commenter is also requesting that language be added regarding the retention of lawsuit related material.

**Accommodation:** None.

**Response G:** Section 3136 informs the reader of the process involved when inmate mail is disapproved, and how the inmate is noticed of that disapproval. Section 3137 informs the reader of the inmate appeal process as it relates to mail and to correspondents. Commenter's recommended change actually imposes an unnecessary burden on the inmate by keeping his property in storage for an extended period, when in fact the inmate may prefer the property to be sent home or used in some fashion as set forth in section 3191. The Department does not agree that any change to the proposed regulations in this section are necessary. Also, see Commenter #5, Response E.